IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1955 of 1989

1.Vinayakrao Mansingrao Gharge,)
2.Dattatray Mansingrao Gharge,)
Deceased by his heirs and legal)
representatives:-)
a.Smt. Laxmibai Dattatray Gharge,)
b.Shri Vilasrao Dattatraya Gharge,)
c.Shri Prakash Dattatray Gharge,)
d.Shri Pandurang Dattatray Gharge)
e.Sou.Shobhatai Sanjay Mohite,)..PETITIONERS
3.Udhavrao Mansingrao Gharge,)
since deceased by legal heirs :)
a.Smt. Krishnabai Udhavrao Gharge,)
b.Shri Jayadeep Udhavrao Gharge,)
c.Sou.Lochanabai Sambhaji Shinde,)
d. Sou.Ujwala Ramchandra Mohite.)

Versus

1.Atmaram Baburao Gharge,)
deceased by legal heirs:-)
1a.Shri Narayan Atmaram Gharge,)
1b.Shri Sanjay Atmaram Gharge,)
1c.Shri Pratap Atmaram Gharge,)
1d.Shri Chandrakant Atmaram Gharge,)
1e.Shri Pintya Atmaram Gharge,)..RESPONDENTS
2. Rustum Baburao Gharge,)
through their Power of Attorney)
Holder Shri Popatrao Ramrao Deshmukh)

WITH
WRIT PETITION NO.1956 OF 1989

1.Vinayakrao Mansingrao Gharge,)
2.Dattatray Mansingrao Gharge,)
Deceased by his heirs and legal)
representatives:-)
a.Smt. Laxmibai Dattatray Gharge,)
b.Shri Vilasrao Dattatraya Gharge,)
c.Shri Prakash Dattatray Gharge,)
d.Shri Pandurang Dattatray Gharge)
e.Sou.Shobhatai Sanjay Mohite,)..PETITIONERS
3.Uddhavrao Mansingrao Gharge,)
since deceased by legal heirs :)
a.Smt. Krishnabai Udhavrao Gharge,)
b.Shri Jayadeep Udhavrao Gharge,)
c.Sou.Lochanabai Sambhaji Shinde,)
d. Sou.Ujwala Ramchandra Mohite.)

Versus

1.Anandrao Ramrao Gharge,)
2.Atmaram Baburao Gharge,)
deceased by legal heirs:-)

2a.Shri Narayan Atmaram Gharge,)
2b.Shri Sanjay Atmaram Gharge,)
2c.Shri Pratap Atmaram Gharge,)
2d.Shri Chandrakant Atmaram Gharge,)
2e.Shri Pintya Atmaram Gharge,)..RESPONDENTS
3. Rustum Baburao Gharge,)
Nos.2 and 3 through their Power of)
Attorney Holder Shri Popatrao Ramrao)
Deshmukh)

Mr. H.D. Gole with Mr. P.D. Ghorge for the Petitioners
Mr. Rahul Kate for Respondent Nos. 1 and 2.

CORAM: F.I. REBELLO, J.
DATED : JANUARY 18, 2005

ORAL JUDGMENT:

. These are petitions under Article 227 of the Constitution of India. Writ Petition No.1955 of 1989 are by the tenants against the landlord and another, who claims interest in the land as tenant. The petitioners had applied for purchase under Section 32G of the Bombay Tenancy & Agricultural Lands Act, 1948. The purchase price was fixed by order dated 31st May, 1984. Writ Petition NO.1856 of 1989 is by the tenants against the intersted persona and others.

2. Two Appeals came to be filed. Appeal No.T.A.9/86 was filed by the landlord and TNC/Appeal-32/85 by the interested persons. Both the appeals came to be disposed by a common order dated 8th May, 1987. The contention of the Appellants in both the Appeals was that the mandatory notice as required under the provisions of Section 32G namely individual notice had not been served on them. On the other hand on behalf of the petitioners objection was raised that the Appeals are time barred and that notice had been served at the registered address. It was also argued that the

Appellant in TNC/32/85 has no locus standi as he is neither tenant nor interested and as such not entitled to any notice under Section 32G of the Act. The learned Appellate Authority noted that the notice had been issued at the registered address and it must be presumed that this notice must be to Appellant landlord in T.A. No.9/96 and that there is record that it is received back undelivered and thereafter service was effected by affixing it at the suit land. The Appellate Authority found that the procedure was faulty and no proper efforts were made to serve and the Appellate Authority proceeded to hold that there was no record to show that intimation was served on the Appellant in T.A.9/86 and the submision that Appeal was not time barred appeared to be correct. In so far as TNC/Appeal/32/85 is concerned the Appellate Authority held that no opportunity was given to the Appellant as there had been failure to issue notice to the Appellant and as such remanded both the matters back to the Tribunal for fresh enquiry and disposal according to law.

. Aggrieved the present petitioner preferred two Revisions which were opposed by the respondents on the ground that they were barred by limitation. The Revisional Authority rejected the contention. However, on merits did not interfere with the order of remand on the ground that the service effected on the respondents was not legal and proper. It is against these orders that the petitioners have filed the present petitions.

3. At the hearing of the petitions on behalf of the

petitioners it is submitted that the respondents in Writ Petition No.1955 of 1989 i.e. the landlord had not applied for condonation of delay in instituting the Appeal and as such the Appeal having not been properly constituted the authority could not have entertained the Appeal. In so far as Writ Petition No.1956 of 1989 is concerned i.e. the petition by the interested persons the same objection is also raised and in addition it is contended that the said Respondent had no locus standi as he is not a tenant and even otherwise in proceedings under Section 326 it is not open to the Tribunal to decide that issue which can only be decided in Application under Section 70 of the B.T. & A.L. Act.

4. In so far as Writ Petition No.1955 of 1989 considering the provisions of section 32G of the Act there is a requirement that individual notice has to be served. Both the Tribunal below have held that notice served on the respondent landlord was not according to law. Considering that this will not be a fit case to interfere with that finding of fact recorded by the Tribunal.

5. That brings us to the second aspect of the matter. The requirement under Section 32G(3) is that if an order is passed in default the Tribunal shall intimate such order to the parties. In the present case admittedly the contention of the landlord was that the order was never communicated to him. The period of Appeal in terms of Section 79 is 60 days from the date of order of the Mamlatdar. The provisions of Limitation Act to the extent applicable are set out in

Section 79. If the order was not communicated that by itself would be sufficient ground to condone the delay. However, that could have been done if an application had been moved by the respondent. That was not done. Considering that to my mind it would be fit and proper that Writ Petition No.1955 of 1989 be allowed to the extent that the order of the Collector and the revisional Authority are set aside and the matter is remanded back to the Collector i.e. the Appellate Authority to enable the respondent landlord in Writ Petition No.1955 of 1989 to file an application for condonation of delay and it is for the Appellate Authority thereafter to consider it according to law and thereafter proceed with the Appeal if the delay is condoned.

6. In Writ Petition No.1956 of 1989 also it appears that there was no application for condonation of delay. There is no dispute that no notice had been served on the respondents, who claim to be the tenant. The various contentions raised by the petitioners against the maintainability of the Appeal including the contention that the enquiry cannot be gone into under Section 32G can only be addressed on merits as and when that issue arises for consideration. The entire appeal was based on the fact that no notice was served. On that count there is no dispute. To my mind, therefore, the ends of justice will be met if the order of the Collector and Revisional Authority in Writ Petition No.1956 of 1989 also are set aside and the matter is remanded back to the Collector as an Appellate Authority to enable the Respondent herein as appelant therein to file

an application for condonation of delay and after giving an opportunity to the respondent for the Collector to consider the said application for condonation of delay and if the delay is condoned then dispose of the Appeal according to law.

7. It is made clear that in so far as merits are concerned all issues are left open for consideration.

8. With the above observations, Rule made absolute in the aforesaid terms. There shall be no order as to costs.

(F.I. REBELLO, J.)